IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/04/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION NO.4801 OF 2003
AND
CRL.M.P.NO.1717 OF 2003.

1.Rajan
2.Arumuga Chettiar
3.Bharathi
4.Joly Rajan ... Petitioners

-Vs-

State, by
The Inspector of Police,
Fairlands Police Station,
Salem.
(Cr.No.462/1999) ... Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the reliefs as stated therein.

For petitioners : Mr.S.K.Rajagopalan

For respondent : Mr.O.Srinath,
Govt.Advcocate (Crl.side)

:O R D E R

Petitioners, who are the accused No.1,2,3 and 5 respectively in the case in P.R.Case No.2 of 2003 on the file of the Court of Judicial Magistrate No.V, Salem, connected to Crime No.462 of 1999 of the respondent, have filed the above criminal original petition praying to quash the said case registered for offences punishable under Sections 14 7,307 and 323 IPC.

2. The grounds under which the criminal original petition has been filed by the petitioners are that this Cr.No.462 of 1999 in question actually arises out of Cr.No.463/1999 registered on the complaint of the first petitioner herein, about w g is heard till this day; that the defacto-complainant in the present case along with four others forcibly entered into the house of the first petitioner and overpowered the women-folk and snatched away gold chains besides the complainant threatening the first

petitioner with murder posing a syringe said to contain orsenic poison if the balance money was not paid to him; that the first petitioner got frightened and knocked off the syringe held by the defacto-complainant; that in the said case, the defacto-complainant in the present case was arrested and remanded along with other accused on the same day; that the injuries alleged to have been received by the defacto-complainant were simple and the respondent police buttressed the case into one under Section 307 IPC as a counter blast to Crime No.463/1999 registered on the complaint lodged by the first petitioner.

3. The petitioners would further submit that the respondent police have not so far investigated the Crime NO.463 of 1999 nor cared to recover the gold chains snatched away by the defacto-complainant and his henchmen nor did they file the final report in spite of a lapse of four years and now they have come forward to charge-sheet the case against the petitioners under Sections 147,307 and 323 IPC in P.R.Case No.2/2003 after a delay of 3 1/2 years; that the other side have committed more heinous crime than what is contemplated against the petitioners, but it has gone without seeing the light of the day. On such grounds, the petitioners have come forward to file the above criminal original petition seeking to quash the case registered, chargesheeted and taken on file in P.R.Case No.2/2003 on the file of the Court of Judicial Magistrate No.V, Salem.

4. On the part of the respondent, the learned Government Advocate would appear and argue that to the true facts and circumstances, the charge-sheet has been filed and the same has been taken on file in P. R.Case No.2/2003 under Sections 147,307 and 323 IPC by the Court of Judicial Magistrate No.V, Salem. Regarding Crime No.463/1999 registered on the complaint lodged by the first petitioner, the learned Government Advocate would submit that the said case was referred as ` mistake of fact' as early as in the year 2001 in RCS No.29/2001.

5. However, on the part of the learned counsel appearing on behalf of the petitioners, he would submit that the RCS has not been served on the petitioners all these days so as to initiate further action. The learned counsel for the petition lso cite a judgment of the Honourable Apex Court delivered in G.SAGAR SURI AND ANOTHER vs. STATE OF U.P. AND OTHERS reported in AIR 2000 SC 754 wherein it is held:

"It cannot be said that on filing of any application for discharge, by accused persons before Magistrate, High Court cannot exercise its jurisdiction under S.482. Jurisdiction under S.482 has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which si essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of osther remedies available in law. Before issuing process, a criminal Court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

6. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, what comes to be known is that on the part of the petitioners they would allege that it is the defacto-complainant and his henchmen, who entered into the interior portion of the house of the first petitioner with a syringe in his hand supposed to contain orsenic poison and threatened to inject the same thus endangering the life of the first petitioner, however, the said attempt was warded off by overpowering the defacto-complainant and he hurriedly lodged the complaint in Cr. No.462/1999 as a counter blast to the genuine complaint lodged on the part of the first petitioner, which too was registered by the respondent police in Cr.No.463/1999 under Sections 147,148,323,506(I) and 395 IPC, but, however, after 3 1/2 years or so, the respondent police have chargesheeted the other case registered but the fate of his complaint in Cr.No.463/1999 is not known.

7. On the part of the learned Government Advocate, he would report that the complaint lodged by the first petitioner has been referred as `mistake of fact' as per RCS No.29/2001. But, the learned counsel for the petitioners would lament that the same was not intimated to the first petitioner who is entitled to know as to what has happened to the complaint lodged by him and in these circumstances, the petitioners have come forward to file the above criminal original petition giving some more facts and seeking to the relief of quashing the PR Case No.2/2003, which was taken on file by the court of Judicial Magistrate No.V, Salem on the charge-sheet filed by the respondent in their Cr.No.462/1999.

8. When the matter has been investigated into and the charge-sheet was filed by the police and when the Magistrate's Court has also taken the same as P.R.Case No.2/2003 for committing the said case to the Court of Sessions, since being a case exclusively triable by the Court of Sessions, and without knowing as to what has happened to the complaint lodged by the first petitioner herein which too got registered in Cr.No.463/1999 by the respondent police, the petitioners have come forward to file the above criminal original petition. From the respondent's side it comes to be known that the same has been referred as `mistake of fact' in the year 2001 itself. But, the learned counsel for the petitioner would wonder as to how it has been referred for any reason whatsoever without an intimation to the first petitioner thus keeping the first petitioner for the last two years in dark regarding the investigation of his complaint. In the above circumstances, the learned counsel appearing on behalf of the petitioner would also advance his arguments citing the judgment of the Honourable Apex Court wherein regarding the powers that could be exercised by the Highs Court under Section 482 of the Cr.P.C., the Honourable Apex Court held that the same should be exercised with great care and not to examine the matter superficially but to prevent abuse of process of Court or otherwise to secure the ends of justice.

9. Bearing in mind the principles evaluated by the Honourable Supreme Court if the case of the petitioners is analysed, it should be mentioned that the respondent police, in exercise of their statutory powers conferred by the Cr.P.C., have investigated into the complaints lodged by the defacto-complainant and the first petitioner as well and having filed the

charge-sheet in the complaint lodged by the defacto-complainant for the offences punishable under Sections 147,307 and 3 23 IPC, they have referred the complaint lodged by the first petitioner as `mistake of fact' as per the RCS No.29/2001 and therefore in a chargesheeted matter which is to be committed and tried by the Court of Sessions, it is not fair on the part of this Court to decide the same on a subjective satisfaction and it is always desirable to permit the trial Court to conduct the trial so as to decide the matter on merits and in accordance with law affording such opportunities for parties to be heard in full.

10. However, since only now through the learned Government Advocate it comes to be known that the complaint lodged by the first petitioner herein and registered in Cr.No.463/1999 has been referred as ` mistake of fact' as per the respondent's RCS No.29/2001, the petitioners, particularly the first petitioner herein, is at liberty to testify the validity of the RCS by means of a private complaint filed before the same Magistrate and since no RCS notice seems to have been served on the first petitioner, this Court is of the view that the first petitioner shall be given sufficient time to file the private complaint before the jurisdiction Magistrate as against the RCS referring his complaint as `mistake of fact' since basically it comes to be seen that the first petitioner has also got a concrete case on facts. However, it is upto the Magistrate to decide and hence under these circumstances, this Court passes the following order in the above criminal original petition:

In result,
(i)The Court of Judicial Magistrate No.V, Salem is hereby directed to entertain the private complaint, if any filed, on the part of the first petitioner herein as against the RCS filed by the respondent police referring his complaint in Cr.No.463/1999 as `mistake of fact' as per RCS No.29/2001, within fifteen days from the date of receipt of a copy of this order by the said Court and with such opportunity for the first petitioner to be heard, shall examine the same in accordance with the legalities concerned with the subject and take a decision, so as to dispose of the said complaint that may be filed by the first petitioner, within three months from the date of receipt of the same.

(ii)Till such time, the case in P.R.Case No.2/2003 shall not be committed to the Court of Sessions.

With the above observations, the above criminal original petition is disposed of.

Consequently, Crl.M.P.NO.1717 of 2003 is closed.

Index: Yes
Internet: Yes
Rao
To
1.The Inspector of Police,

Fairlands Police Station,
Salem.

2.The Judicial Magistrate No.V,
Salem.

3.The Public Prosecutor,
High Court,
Madras.